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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,520	06/18/2001	John C. Parsons	1931.VIN	2425
40256	7590	04/26/2006	EXAMINER	
FERRELLS, PLLC			SPERTY, ARDEN B	
P. O. BOX 312			ART UNIT	
CLIFTON, VA 20124-1706			PAPER NUMBER	

1771

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,520

Applicant(s)

PARSONS ET AL.

Examiner

Arden B. Sperty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All. b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

NON-FINAL OFFICE ACTION

1. Applicant's submission after Final rejection has been entered and carefully considered.
2. Applicant's amendments to the specification are sufficient to overcome the previous objection.
3. The rejection of claim 1 and 14 under 35 USC 112, first paragraph, concerning the term "residue" is withdrawn, per Applicant's comments. As pointed out by Applicant, a "residue" appropriately describes that which is left behind as a result of the disclosed drying process. Therefore, the specification is enabling for the claimed residue, and the rejection is withdrawn. It is also noted that the term "residue" accordingly implies a drying step, whereas the previous claim language was drawn to an "aqueous" emulsion binder. The structural difference implied by the change in language is that a dried binder composition is now implied, whereas previously an aqueous emulsion was claimed.
4. Prior art rejections based on the Cole reference are withdrawn. As pointed out in Applicant's response after Final rejection, the Cole reference appears to use the terms "dispersible" and "soluble" interchangeably. While this is not uncommon in the art, Applicant's specification includes disclosure setting forth intended differences in the definitions of the two terms (page 4). Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*,

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190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). Applicant's disclosure complies with these requirements, thus it is agreed that the Cole reference, while teaching "water-dispersible polymers," does not make the same distinction between "dispersible" and "soluble" that Applicant sets forth on page 4 of the specification. For this reason, the rejection cannot be sustained. Furthermore, according to the definition of "dispersible" set forth in Applicant's specification, the emulsion residue in the final product is distinctly different than, for example, a solution residue. This point is made as further support for withdrawal of rejections in view of the Cole prior art.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 8, 10, 11 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6562892 to Eknoian et al.

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e)

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might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The reference teaches salt sensitive aqueous emulsion polymers which form films that are dispersible, rather than soluble, in tap water. The films are non-dispersible in water containing at least 0.5 percent by weight of an inorganic salt. The polymers comprise from 1 to 100 percent hydrophilic monomer, and from 0 to 99 percent non-hydrophilic monomer. A film formed from the polymer has the claimed Tg property. See column 2, lines 18-26 and lines 48-67. The disclosed polymers find application as nonwoven binders (column 7, lines 11-15). Thus, the limitations of claims 1 and 14 are met.

Regarding claim 8, the polymer may further comprise plasticizers, tackifiers, fillers, humectants, and surfactants (col. 6, lines 1-5). Regarding claim 11, the humectant additive meets the limitations of a lotion comprising a humectant.

Claim 10 does not further limit the structure of claim 1. An "article" does not imply any particular structure, feature, or requirement.

7. Claims 1, 8, 10, 11 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6683129 to Eknoian.

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it

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constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The reference teaches salt sensitive aqueous emulsion polymers that are dispersible in tap water. The polymers are non-dispersible in water containing at least 0.5 percent by weight of an inorganic salt (col. 1, lines 6-14). The polymers form films (col. 4, lines 33+), and are employed in nonwoven products (col. 4, lines 8-18). The ethylenically unsaturated monomers meet the compositional limitations of claims 1 and 14. Since the same composition is disclosed by the reference, it can be reasonably presumed that the films would have the same T_g property as claimed.

Regarding claim 8, the polymer may further comprise plasticizers, tackifiers, thickeners, fillers, humectants, and surfactants (col. 11, lines 59-61). Regarding claim 11, the humectant additive meets the limitations of a lotion comprising a humectant.

Claim 10 does not further limit the structure of claim 1. An "article" does not imply any particular structure, feature, or requirement.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-6, 9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6562892 to Eknoian, as applied to claim 1 above.

Although the reference is silent with respect to the details of the nonwoven material to which the composition is applied, the limitations of claims 2-5, 9 and 13 would have been obviously provided in accordance with the recited intended uses (col. 6, lines 60-67 and col. 7, lines 11-18). Staple length fibers are common in wet wipes to facilitate dispersal in water. The basis weight of wet wipes may vary within known parameters. Absent a showing of unexpected results with the claimed details, no patentable distinction is seen over what is common and conventional in the art for the uses disclosed by the reference.

It would have been obvious for one of ordinary skill in the art to determine a preferred amount of binder, in accordance with the particular intended use. *In re Aller*, 105 USPQ 233 (CCPA 1955). Intended uses vary, and so would the amount of binder required for the desired properties. It would have been well within the ordinary level of skill of one in the art to determine the optimal amount of binder. Absent a showing of unexpected results, the claimed proportions are not seen to distinguish over what is routinely determined in the textile engineering art.

Regarding claim 12, the reference teaches a salt content, in which the polymer is non-dispersible (col. 2, lines 18-26).

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10. Claims 2-6, 9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6683129 to Eknoian, as applied to claim 1 above.

Although the reference is silent with respect to the details of the nonwoven material to which the composition is applied, the limitations of claims 2-5, 9 and 13 would obviously have been provided in accordance with the recited intended uses (col. 4, lines 8-18). Staple length fibers are common in wet wipes to facilitate dispersal in water. The basis weight of wet wipes may vary within known parameters. Absent a showing of unexpected results with the claimed details, no patentable distinction is seen over what is common and conventional in the art for the uses disclosed by the reference.

It would have been obvious for one of ordinary skill in the art to determine the optimal amount of binder, in accordance with the particular intended use. *In re Aller*, 105 USPQ 233 (CCPA 1955). Intended uses vary, and so would the amount of binder required for the desired properties. It would have been well within the ordinary level of skill of one in the art to determine the optimal amount of binder. Absent a showing of unexpected results, the claimed proportions are not seen to distinguish over what is routinely determined in the textile engineering art.

Regarding claim 12, the reference teaches a salt content, in which the polymer is non-dispersible (col. 1, lines 1-25).

Double Patenting

11. Claims 1-6 and 8-14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6562892.

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Although the conflicting claims are not identical, they are not patentably distinct from each other because the more specific claims 1-3 and 14-18 of the patent inherently suggest the broader claims of the present application. Claim 4 of the patent is drawn to the same composition as claimed in the present application. Claims 5-13 of the patent depend from claim 4. While the patent does not claim a substrate material, such as a nonwoven, the specification clearly intends the composition for use in nonwoven applications, and details of such nonwoven would have been readily obvious to one of ordinary skill in the art.

Claims 1-6 and 8-14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6683129. Although the conflicting claims are not identical, they are not patentably distinct from each other because the more specific claims of the patent inherently suggest the broader claims of the present application. While the patent does not claim a substrate material, such as a nonwoven, the specification clearly intends the composition for use in nonwoven applications, and details of such nonwoven would have been readily obvious to one of ordinary skill in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

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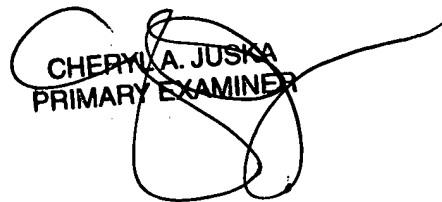
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arden B. Sperty
Examiner
Art Unit 1771

April 21, 2006



CHERYL A. JUSKA
PRIMARY EXAMINER